(3)

C.F-2005

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 3002 / 2005

Petitioners :

1. M/s Jai Keshri Industries
Industrial Estate,
Jagdalpur

2. Rajendra Prasad Shrivastava
S/o Shri Jai Narayan Shrivastava
Aged about 54 years,
Proprietor M/s Jai Keshri Industries
Nayapara Jagdalpur

Versus

Respondents :

1. State Bank of India
Bank way reclamation
Madam Cama Road,
Nariman Point,Mumbai
Through – Branch Manager,
Branch – Jagdalpur,
Tahsil – Jagdalpur,
Dist : Bastar-(C.G.)

P.R. No. 3151/05
Presented by Shri Sanjay Bhatt
dated 21/7/05

2. N.Rama Rao
S/o N.Sitaramaiah,
30, Business,
Sri Srinivasa Sheet Grih (P) Ltd.,
Parpa, Jagdalpur

3. The Recovery Officer-II
Debts Recovery Tribunal,
Shanti Kunj, Civil Lines,
Jabalpur – (M.P.)

WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

(48)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.3002/ सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15-7-2005

Heard Mr. Prafull Bharat, counsel for the petitioners, on admission.

The petitioners have preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality, propriety and correctness of the order dated 29-6-2005 passed by the Recovery Officer-II, Debts Recovery Tribunal, Jabalpur.

Brief facts leading to filing of this writ petition are that the petitioners herein took loan from respondent No.1 Bank and when the petitioners failed to repay the loan amount, respondent No.1 filed a civil suit before the Debts Recovery Tribunal, Jabalpur, which was registered as T.A.No.6/98, for recovery of the amount, and which ultimately came to be decided by the judgment dated 17-1-2000 by the said Tribunal, and a decree to the effect of Rs.32,79,767/- was passed against the petitioners herein. Accordingly, a recovery certificate was issued against the petitioners and the same was sent to the Recovery Officer. Vide Annexure P-3 proclamation of sale was issued by the Recovery Officer on 10-1-2005, the same has been challenged in this writ petition on the ground that the said proclamation being time barred, the Recovery Officer was not entitled to attach or sale the immovable property.

Learned counsel for the petitioners argued that in view of Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act of 1993'), provisions of Second and Third Schedules to the Income Tax Act, 1961, are applicable. As per Rule 68-B of the Second Schedule to the Income Tax Act, 1961, sale of immovable property cannot be made after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, was passed. Learned counsel submits that as the decree in question was passed on 20th January, 2000, and the proclamation was issued on 10-1-2005, it is clearly time barred and the same is without jurisdiction. He further submits that the petitioners have raised objection to this effect and the same has been rejected by the Recovery Officer.

(49)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.3002/सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the petitioners urged that since the order passed by the Recovery Officer is patently illegal, therefore, he is entitled to invoke the jurisdiction of this Court under Article 227 of the Constitution of India, for exercising the supervisory jurisdiction. He also submitted that the said Recovery Officer has passed the order without jurisdiction.

Having heard learned counsel for the petitioners, I have perused the documents and relevant law. Section 30 of the Act of 1993 provides for appeal against the order of Recovery Officer, which envisages that

> "Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal".

Therefore, a statutory provision has been made for appeal against the order of the Recovery Officer before the Tribunal and alternative remedy is available to the petitioners herein before the judicial authority.

In the circumstances, the petitioners ought to have availed that opportunity. As such, I am of the opinion that in view of this provision, it is not a fit case that extraordinary jurisdiction should be invoked. Accordingly, the writ petition is dismissed, at the admission stage itself.

Learned counsel for the petitioners submits that as the petitioners have preferred this writ petition, the question of limitation will arise.

It is for the Tribunal to consider the request for condoning the delay in filing the appeal.

Consequently, M.(W.)P.No.2514/2005 and I.A.No.5871/2005 stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge